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Daniel Gibbons  
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RECEIVED

JAN - 3 2007

AT 8:30  
WILLIAM T. WALSH  
CLERK M

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

BAYER CORPORATION,

Defendant.

COMPLAINT FOR CIVIL  
PENALTIES, INJUNCTIVE  
AND OTHER RELIEF

CIV. ACTION NO. 07-01 (HAA)

Plaintiff, United States of America, acting upon the notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(l), 13(b) and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(l), 53(b) and 56(a), to obtain monetary civil penalties, a permanent injunction, rescission of contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief from defendant for its violations of a final Commission order to cease and desist.

### JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355 and under 15 U.S.C. §§ 45(l), 53(b) and 56(a).

3. Venue in the United States District Court for the District of New Jersey is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

### DEFENDANT

4. Defendant Bayer Corporation is an Indiana corporation with its headquarters located at 100 Bayer Road, Pittsburgh, PA 15205, and an office and place of business located within the District of New Jersey at 36 Columbia Road, Morristown, New Jersey 07962. Bayer Corporation, with annual sales exceeding \$10 billion, through its subsidiaries, manufactures and sells a variety of products, including vitamins, dietary supplements, and over-the-counter and prescription drugs. Bayer HealthCare, LLC is a subsidiary of defendant Bayer Corporation, and markets and sells One-A-Day brand vitamins and supplements, including One-A-Day WeightSmart.

5. At all times material herein, defendant has been engaged in the advertising, offering for sale, sale, or distribution of the One-A-Day WeightSmart multivitamin and dietary supplement in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### PRIOR COMMISSION PROCEEDING

6. In a Commission proceeding bearing Docket No. C-3323, in which the Commission charged Miles Inc., a U.S. subsidiary of Bayer Group of Germany, with violating Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, the Commission, on January 28, 1991, entered a final order against Miles Inc., to cease and desist certain advertising practices with respect to One-A-Day brand vitamin and mineral supplements ("Commission's Order"). The order was served upon Miles Inc., in 1991, and remains in full force.

7. Defendant Bayer Corporation is a successor to Miles Inc. and subject to the Commission's Order.
8. The Commission's Order, attached to this Complaint as Exhibit A, includes the following provision:

ORDER

\* \* \*

II.

IT IS FURTHER ORDERED that respondent Miles Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of One-A-Day brand vitamins, including specifically, but not limited to, One-A-Day Maximum Formula, One-A-Day Stressguard, One-A-Day Essential, One-A-Day Plus Extra C, and One-A-Day Within, do forthwith cease and desist from making any representation, directly or by implication, concerning the need for or benefits to be derived from consumption of such product unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence to substantiate the representation; competent and reliable scientific evidence shall mean those tests, analyses, research, studies or other evidence, conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

\* \* \*

DEFENDANT'S ONE-A-DAY WEIGHTSMART

9. Each tablet of defendant's One-A-Day WeightSmart multivitamin and dietary supplement contains, among other things, 32 mg of EGCG (epigallocatechin gallate) from extract of green tea (*Camilla sinensis* leaf), as well as vitamins, minerals, and caffeine. (An earlier formulation of the product contained 27 mg of EGCG.) The recommended daily dose is one tablet. Various

retailers have sold One-A-Day WeightSmart to consumers at prices ranging from about \$8.99 for 50 tablets to about \$16.99 for 100 tablets.

DEFENDANT'S ADVERTISING FOR ONE-A-DAY WEIGHTSMART

10. On numerous occasions since January 2003, defendant has disseminated or caused to be disseminated advertisements for One-A-Day WeightSmart, including but not limited to 30- and 15-second commercials on network and cable television, print advertisements in various magazines, such as Better Homes and Gardens, Cooking Light, Family Circle, Redbook, and TV Guide, and Internet advertisements at [www.oneaday.com](http://www.oneaday.com). These advertisements, which include, but are not necessarily limited to, the attached Exhibits B-J, contain the following statements and depictions, among others:

A. Television Commercial: "Remember When" 30-second

MOM: I remember when I thought I could eat anything.

DAUGHTER: (*eating pizza*) Want another piece?

MOM: No thanks.

MOM: Then in my 30's, my metabolism slowed down. So, I got smart.

MOM: I watch what I eat. Exercise more.

MOM: Plus, I found a new multivitamin.

ANNOUNCER: One-A-Day WeightSmart. The first and only complete multivitamin with an ingredient to enhance your metabolism. EGCG, a natural green tea extract, to help you while you manage your weight.

MOM: A multivitamin for my metabolism. Now that's smart.

ANNOUNCER: One-A-Day WeightSmart.

(Exhibit B)

B. Television Commercial: "Boom Box" 15-second

VIDEO: Woman listening to radio inside home

MALE (VO) (*on radio*): Just in! Most women over 30 can gain 10 pounds a decade, due in part to slowing metabolism. (SUPER: Average female weight gain over a decade.)

VIDEO: Woman throwing radio out the window

MALE (VO) (*on radio*): So eat right, exercise, and take One-A-Day WeightSmart. The complete multi-vitamin with EGCG to enhance metabolism. (SUPER: For nutritional support only. Not a weight loss product.)

WOMAN: Now you tell me.

MALE (VO) *(on radio)*: One-A-Day WeightSmart. (SUPER: The multivitamin with more for your metabolism.)

(Exhibit C)

C. Television Commercial: "Saturday Morning" 30-second

WOMAN: There was a time when I ate like this. *(Visual of boy eating donut)*

WOMAN: But then, in my 30s, my metabolism slowed down. So now I exercise more, eat smarter. *(Visual of woman walking with her family)* And I found One-A-Day WeightSmart.

ANNOUNCER: *(Visual of WeightSmart package)* (SUPER: For nutritional support only. Not a weight loss product.) One-A-Day WeightSmart, the first complete multi-vitamin with EGCG, a natural green tea extract to enhance metabolism *(Visual of woman walking with boy)* to help you while you manage your weight.

WOMAN: A multivitamin for your metabolism, now that's smart.

ANNOUNCER: One-A-Day WeightSmart. (SUPER: The multivitamin with more for your health.)

(Exhibit D)

D. Television Commercial: "Simple Exercise" 30-second

WOMAN: After 30, your metabolism can slow down and you know how hard that can make things. Here's an easy exercise that can help. One-A-Day WeightSmart. Just lift, and twist and bend. *(woman opening WeightSmart bottle)*

ANNOUNCER: One-A-Day WeightSmart. A complete multivitamin with EGCG, a natural green tea extract, to enhance metabolism. (SUPER: For nutritional support only. Not a weight loss product.)

WOMEN *(women in an exercise class opening WeightSmart bottles)*: And lift and twist and bend. (SUPER: Use with diet and exercise.)

WOMAN: Just once a day. That's easy.

ANNOUNCER and SUPER: One-A-Day WeightSmart. The multivitamin with more for your metabolism.

(Exhibit E)

E. Television Commercial: "Dessert" 15-second

*(Two women, JANE and MARTHA, sit at a table as a dessert cart rolls by.)*

JANE: Do you want some dessert?

MARTHA: Not with my metabolism.

JANE: Yea, in your 30's your metabolism slows.

MARTHA: What can you do?

JANE: You know what I do? I eat right, exercise (*visual of JANE walking with a dog*), and I switched to One-A-Day WeightSmart.

(*visual of One-A-Day WeightSmart packaging in which the letters "EGCG" pop out and glow*)

JANE (cont.): It's a complete multivitamin, with EGCG, to help enhance metabolism.

(SUPER: For nutritional support only. Not a weight loss product.)

(SUPER (CBS): This statement have [sic] not been evaluated by the FDA. This product is not intended to diagnose, treat, cure, or prevent any disease.)

MARTHA: Every little bit helps.

ANNOUNCER: One-A-Day WeightSmart.

(Exhibit F)

F. Television Commercial: "Beach" 15-second

(*Two women, MOM 1 and MOM 2, walk along a beach and pass by an ice cream vendor.*)

MOM 2: Ice cream?

MOM 1: With my metabolism?

MOM 2: Yea, in your 30's, your metabolism slows. So I eat right, I exercise, and I switched to One-A-Day WeightSmart.

ANNOUNCER: It's a complete multivitamin... (SUPER: For nutritional support only. Not a weight loss product.)

ANNOUNCER (cont.): with EGCG to help enhance metabolism.

MOM 1: I'll take all the help I can get.

ANNOUNCER: One-A-Day WeightSmart. (SUPER: [oneaday.com](http://oneaday.com))

(Exhibit G)

G. Print Advertisement

You're working on your metabolism.

(*Picture of two women walking*)

Is your multivitamin?

(*Picture of One-A-Day WeightSmart package*)

Introducing New One-A-Day WeightSmart.

Starting in your 30s, your metabolism slows down and you can gain weight. Now One-A-Day WeightSmart is the first and only complete multivitamin with EGCG, a natural green tea extract that enhances your metabolism to help while you work to control your weight. When you do your part by eating right and exercising, One-A-Day WeightSmart can help.

(*Picture of capsule with "One-A-Day" logo*) The multivitamin with more for your health.

For nutritional support as part of a healthy lifestyle. These statements have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure, or prevent any disease.

(Exhibit H)

H. Internet Advertisement

One-A-Day WeightSmart

#### FREQUENTLY ASKED QUESTIONS

...

Q: How does your metabolism work?

A: Metabolism is the sum of all reactions in the body. Burning fat is an important part of metabolism. As you burn fat, you are using calories and if you burn more calories than you take in, you can lose weight. However, as you enter your 30's, your metabolism will naturally slow down and you may gain weight.

To help keep your metabolism going strong, One-A-Day created WeightSmart. With the key ingredient EGCG (Green Tea Extract), WeightSmart is a complete multi-vitamin plus more to enhance your metabolism while you are working to control your weight.

(Exhibit I)

I. Packaging

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**NEW  
FORMULA**

**32 mg  
EGCG**

**ONE A DAY**

DIETARY SUPPLEMENT

***Weight Smart***<sub>®</sub>

EPHEDRA FREE

100 TABLETS

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**MORE<sup>††</sup> OF A METABOLISM PROMOTING NUTRIENT\***

***Weight Smart***<sub>®</sub>

Complete  
Multivitamin  
Plus More to:

*Specially Formulated  
to help you  
While You Control  
Your Weight*

- ENHANCE YOUR METABOLISM  
WITH EGCG (GREEN TEA EXTRACT)\*
- CONVERT FOOD TO FUEL  
WITH EXTRA<sup>†</sup> CHROMIUM AND  
KEY B VITAMINS\*

\*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

††Refers to 33% increase in Chromium compared to original formula.

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(Exhibit J)

#### CAUSE OF ACTION

11. Through the means described in Paragraph 10, in connection with the advertising, offering for sale, sale, or distribution of One-A-Day WeightSmart multivitamin and dietary supplement, defendant has represented, directly or by implication, on numerous occasions that One-A-Day WeightSmart:

- a. Increases metabolism;
- b. Enhances metabolism through its EGCG content;
- c. Helps prevent some of the weight gain associated with a decline in metabolism in users over age 30; and
- d. Helps users control their weight by enhancing their metabolism.

12. Defendant has made the representations set forth in Paragraph 11 without possessing and relying upon competent and reliable scientific evidence to substantiate the representations, thereby violating Part II of the Commission's Order.

#### CIVIL PENALTIES AND EQUITABLE RELIEF

13. Each dissemination by defendant of an advertisement containing any representation in violation of the Commission's Order, in one or more of the ways described above, constitutes a separate violation for which plaintiff seeks monetary civil penalties.



14. Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(c) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(c), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the Commission's Order.

15. Under Sections 5(l) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(l) and 53(b), this Court is authorized to issue a mandatory injunction and such other and further equitable and ancillary relief as it may deem appropriate in the enforcement of the Commission's Order and the FTC Act, including disgorgement and restitution to prevent and remedy any violations of any provision of law enforced by the Commission.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(l) and 53(b), and pursuant to the Court's own equitable powers to:

- (1) Enter judgment against defendant and in favor of plaintiff for each violation alleged in this Complaint;
- (2) Award plaintiff monetary civil penalties from defendant for each violation of the Commission's Order alleged in this Complaint;
- (3) Enjoin defendant from violating the Commission's Order;
- (4) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from defendant's violations of the FTC Order, including, but not limited to, rescission of contracts, restitution, and disgorgement of ill-gotten gains; and
- (5) Award plaintiff such additional relief as the Court may deem just and proper.

DATED: January 3, 2007

OF COUNSEL:

JAMES A. KOHM  
Associate Director  
for Enforcement  
Federal Trade Commission

ROBERT M. FRISBY  
Assistant Director  
for Enforcement  
Federal Trade Commission

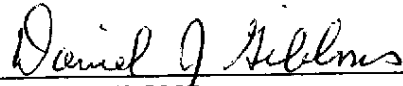
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Federal Trade Commission

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FOR THE UNITED STATES OF AMERICA


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## EXHIBIT A

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

9023010  
B092205

COMMISSIONERS: Janet D. Steiger, Chairman  
Terry Calvani  
Mary L. Azcuenaga  
Andrew J. Strenio, Jr.  
Deborah K. Owen

In the Matter of  
MILES INC.,  
a corporation.

DOCKET NO. C-3323

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of Complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing a Consent Order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such Complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1127 Myrtle Street, Post Office Box 40, Elkhart, Indiana 46515.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent{s}, and the proceeding is in the public interest.

## **ORDER**

### **I**

**IT IS ORDERED** that respondent Miles Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of vitamin and/or mineral supplements, do forthwith cease and desist from representing, directly or by implication, that consumption of any such product:

- (A) affords any protection or benefit to human lungs;
- (B) is necessary or beneficial in replacing any vitamin and/or mineral lost through physical exercise;
- (C) is necessary or beneficial in replacing any vitamins and/or minerals lost as a result of, or provides any benefit with regard to, the stress of daily living;

unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence to substantiate the representation; competent and reliable scientific evidence shall mean those tests, analyses, research, studies or other evidence, conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

### **II**

**IT IS FURTHER ORDERED** that respondent Miles Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of One-A-Day brand vitamins, including specifically, but not limited to, One-A-Day Maximum Formula, One-A-Day

Stressgard, One-A-Day Essential, One-A-Day Plus Extra C, and One-A-Day Within, do forthwith cease and desist from making any representation, directly or by implication, concerning the need for or benefits to be derived from consumption of such product unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence to substantiate the representation; competent and reliable scientific evidence shall mean those tests, analyses, research, studies or other evidence, conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

### III

**IT IS FURTHER ORDERED** that, for three (3) years from the date that the representations are last disseminated, respondent shall maintain and upon request make available to the Commission for inspection and copying:

- (A) All materials relied upon to substantiate any claim or representation covered by this Order; and
- (B) All tests, reports, studies, surveys or other materials in its possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation.

### IV

**IT IS FURTHER ORDERED** that respondent shall distribute a copy of this Order to each officer and other person responsible for the preparation or review of advertising material for products subject to this Order.

### V

**IT IS FURTHER ORDERED** that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VI

**IT IS FURTHER ORDERED** that respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this Order.

By the Commission. Commissioner Starek did not participate.

  
DONALD S. CLARK  
Secretary

SEAL:

ISSUED: January 28, 1991.

## EXHIBIT B



One-A-Day WeightSmart  
"Remember When" :30



MOM: I remember when I thought...



I could eat anything.

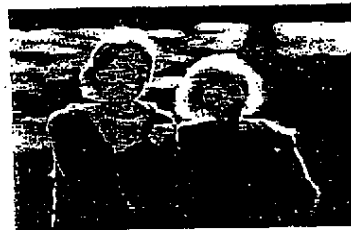


DAUGHTER: Want another piece?

MOM: No Thanks.



MOM: Then in my 30's, and my metabolism slowed down. So, I got smart.



MOM: I watch what I eat. Exercise more.



MOM: Plus, I found a new multivitamin.



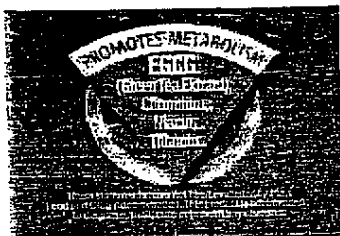
AVO: One-A-Day WeightSmart.



AVO: The first and only complete multivitamin with an...



AVO: ...ingredient to enhance your metabolism.



AVO: EGCG, a natural green tea extract, to help you...



AVO: ...while you manage your weight.



MOM: A multivitamin for my metabolism. Now that's smart.



AVO: One-A-Day WeightSmart.

## EXHIBIT C

One-A-Day WeightSmart "Boom Box" :15 MWS4306 (ALL other)



MALE (VO) (ON RADIO): Just in



Most women over 30



can gain 10 pounds a decade,



due in part to slowing metabolism.



(SFX: WHOOSH IN & OUT) So



(SFX: RADIO FLYING OUT THE WINDOW) eat right, exercise,



and take One A Day Weight Smart. The complete multi-vitamin with EGCG to enhance metabolism.



WOMAN: Now you tell me.



MALE (VO) (ON RADIO): One A Day Weight Smart.

VIDEO ALSO AVAILABLE IN ANALOG & DIGITAL FORMATS

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330 West 42nd Street, New York, NY 10036 T 212 736 2010

## EXHIBIT D

One-A-Day WeightSmart "Saturday Morning" :30 MW54023 (ALL other)



(MUSIC IN)



WOMAN: There was a time when I ate like this.



(MUSIC)



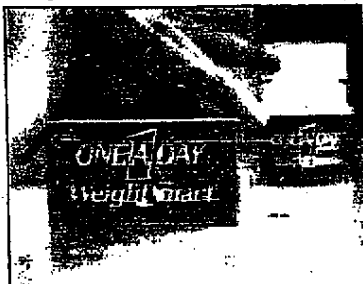
But then, in my 30s, my metabolism slowed down.



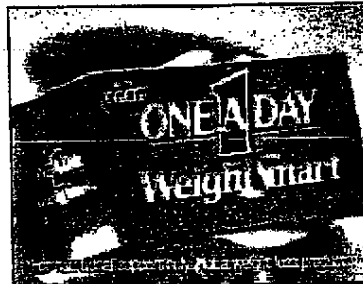
So now I exercise more, eat smarter.



And I found One A Day Weight Smart.



FEMALE ANNCR: One A Day Weight Smart.



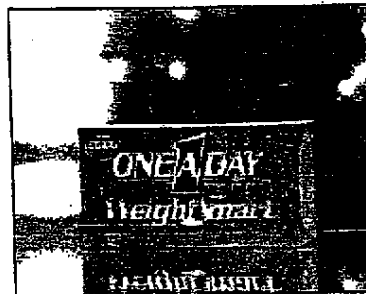
The first complete multivitamin with EGCG, a natural green tea extract to enhance metabolism



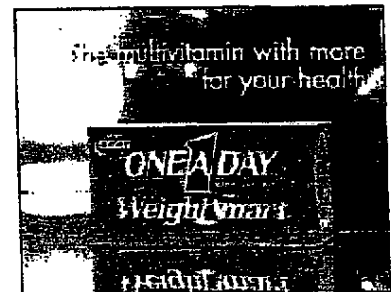
to help you while you manage your weight.



WOMAN: A multivitamin for my metabolism, now that's smart.



ANNCR: One A Day



Weight Smart. (MUSIC OUT)












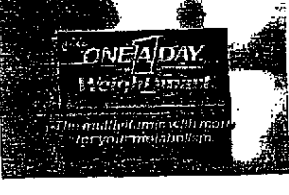
VIDEO ALSO AVAILABLE IN ANALOG & DIGITAL FORMATS

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## EXHIBIT E

WeightSmart "Simple Exercise" :30 (ABC/FOX/WB/CBL/SYND)

		
WOMAN(OC) After 30, your metabolism can slow down	and you know how hard that can make things.	Here's an easy exercise
		
that can help.	One-A-Day WeightSmart.	Just lift, and twist and bend.
		
AVO: One-A-Day WeightSmart.	A complete multivitamin with EGCG, a natural green tea extract, to enhance metabolism.  SUPER: For nutritional support only. Not a weight loss product.	WOMEN: And lift and twist and bend.  SUPER: Use with diet and exercise.
		
WOMAN: Just once a day. That's easy.	AVO: One-A-Day WeightSmart.	The multivitamin with more for your metabolism.  SUPER: The multivitamin with more for your metabolism.

## EXHIBIT F



One-A-Day WeightSmart / "Dessert" :15



JANE: Do you want some dessert?

MARTHA: Not with my metabolism.



JANE: Yea, in your 30's your metabolism slows.



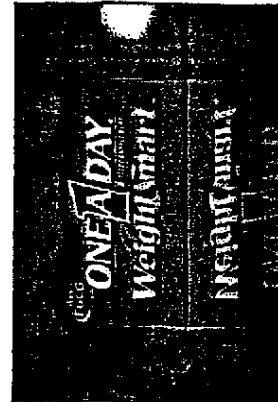
MARTHA: What can you do?



JANE: exercise,



JANE: and I switched to One-A-Day WeightSmart.



VISUAL: EGCG POPS OUT AND GLOWS.

JANE: It's a complete multivitamin, with EGCG, to help enhance metabolism.

SUPER: For nutritional support only. Not a weight loss product.

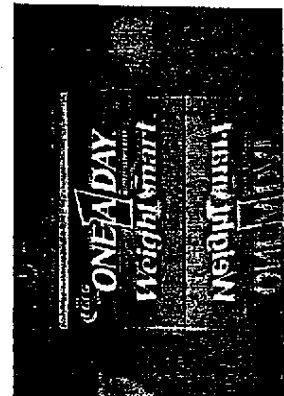
SUPER (CBS): This statement have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure or prevent any disease.



JANE: You know what I do? I eat right,



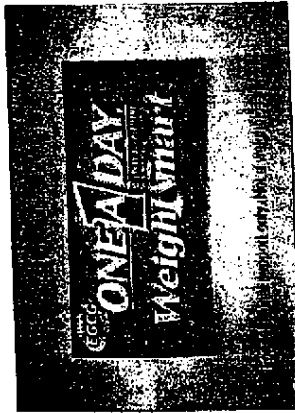
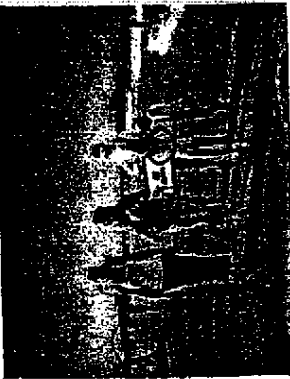
MARTHA: Every little bit helps.



AVO: One-A-Day WeightSmart.

## EXHIBIT G

One-A-Day WeightSmart / "Beach" :15 TV / 6.21.05

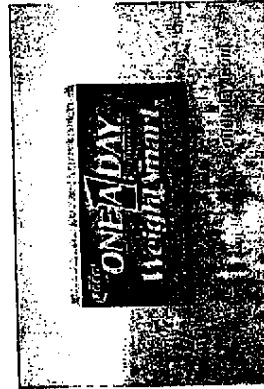
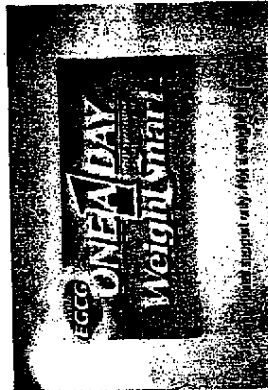


MOM 2: Ice cream?

MOM 1: With my metabolism?

MOM 2: Yea, in your 30's, your metabolism slows. So I eat right, I exercise, and I switched to One-A-Day WeightSmart.

AVO: It's a complete multivitamin...  
SUPER: For nutritional support only. Not a weight loss product.  
SUPER (CBS): These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.



AVO: with EGCG...

SUPER: For nutritional support only. Not a weight loss product.  
SUPER (CBS): These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

AVO: to help enhance metabolism.

SUPER: For nutritional support only. Not a weight loss product.  
SUPER (CBS): These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

MOM 1: I'll take all the help I can get.

AVO: One-A-Day WeightSmart.  
SILENT SUPER: oneaday.com

## EXHIBIT H

You're working on your **metabolism.**

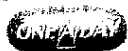


Is your **multivitamin?**



**Introducing New One-A-Day WeightSmart.**

Starting in your 30s, your metabolism slows down and you can gain weight. Now One-A-Day WeightSmart is the first and only complete multivitamin with EGCG, a natural green tea extract that enhances your metabolism to help while you work to control your weight. When you do your part by eating right and exercising, One-A-Day WeightSmart can help.



**The multivitamin with more for your health.**

**Bayer** 

For nutritional support as part of a healthy lifestyle. These statements have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure or prevent any disease.

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## EXHIBIT I

# One-A-Day WeightSmart

## FREQUENTLY ASKED QUESTIONS

- Q. Where can I purchase One-A-Day WeightSmart?
- Q. What is EGCG?
- Q. Does this product contain caffeine?
- Q. Can I use this product with my medication?
- Q. Can I take One-A-Day WeightSmart with another multivitamin?
- Q. Will this product help control my weight?
- Q. How does your metabolism work?
- Q. Does this product contain ephedra?
- Q. Is One-A-Day WeightSmart safe?
- Q. This product didn't work for me - it doesn't seem to help control my weight.
- Q. Can a teenager or man use this product?
- Q. How does One-A-Day WeightSmart differ from weight loss products like Dexatrim and Metabolife?
- Q. How is WeightSmart different from other multivitamins?

Q. Where can I purchase One-A-Day WeightSmart?

A. WeightSmart can be found in the multivitamin section of most drug stores, food stores, mass merchandisers, and club stores. In select stores, WeightSmart may also be located in the diet section to help promote a healthy lifestyle and provide general nutritional support while you work to control your weight. If you do not find it on your local store shelf, ask the store manager to order it for you. We have found that most stores make their purchasing decisions based on consumer interest.

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Q. What is EGCG?

A. EGCG, short for epigallocatechin gallate, is a natural extract of Green Tea that enhances metabolism to help consumers who are working to control their weight with diet and exercise.

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Q. Does this product contain caffeine?

A. Yes, One-A-Day WeightSmart does contain a small amount of caffeine (15mg) equivalent to less than 1/4 cup of coffee. This amount falls far below the levels contained in traditional diet aids, which can exceed 100mg and create a "jittery" feeling.

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Q. Can I use this product with my medication?

A. We recommend that you consult with your physician before using any One-A-Day product if you are taking medications.

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Q. Can I take One-A-Day WeightSmart with another multivitamin?

A. We do not recommend taking One-A-Day with another multivitamin.

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Q. Will this product help control my weight?

A. No. This is a multivitamin supplement to enhance your metabolism while you're working to control your weight. It is one thing you can do as part of a healthy lifestyle while you're working to control your weight.

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**2. How does your metabolism work?**

**A.** Metabolism is the sum of all reactions in the body. Burning fat is an important part of metabolism. As you burn fat, you are using up calories and if you burn more calories than you take in, you can lose weight. However, as you enter your 30's, your metabolism will naturally slow down and you may gain weight.

To help keep your metabolism going strong, One-A-Day created WeightSmart. With the key ingredient EGCG (Green Tea Extract), WeightSmart is a complete multivitamin plus more to enhance your metabolism while you are working to control your weight.

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**Q. Does this product contain ephedra?**

**A.** No! One-A-Day WeightSmart does not contain ephedra or any other ephedra-based ingredient, such as ma huang or guarana.

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**Q. Is One-A-Day WeightSmart safe?**

**A.** Yes! The health of our consumers is our top priority. We work to ensure that our products do not cause adverse reactions.

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**Q. This product didn't work for me - it doesn't seem to help control my weight.**

**A.** One-A-Day WeightSmart is not a weight-control product. There are many factors involved in weight control: it is a long-term process that includes eating right and exercising. WeightSmart is a multivitamin supplement to help you while you control your weight with diet and exercise. It is not a diet aid or weight loss product.

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**Q. Can a teenager or man use this product?**

**A.** We have designed this product for men and women 18 years of age and older. It will provide the benefits of a complete multivitamin.

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**Q. How does WeightSmart differ from weight loss products like Dexatrim and Metabolife?**

**A.** One-A-Day WeightSmart is not a weight loss product. One-A-Day WeightSmart is a complete multivitamin specially formulated with 100% or more of key vitamins and minerals men and women need when watching their weight. Plus, it contains EGCG (Green Tea Extract), to enhance their metabolism as they work to control their weight. WeightSmart is a safe way to supplement consumers' weight control regimen and should be used as part of a healthy lifestyle that includes a balanced diet and exercise.

Diet aids, on the other hand, are designed to deliver weight loss results. As a result, they may contain ingredients, such as ephedra, ma huang, or guarana. At the same time, these products only provide a few nutrients and at low % Daily Value levels so consumers may not get the vitamins and minerals they need, which is particularly important when watching their weight.

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**Q. How is WeightSmart different from other multivitamins?**

**A.** When adults are controlling their weight, they are eating less than they normally do and they may not be getting all the nutrients they need. To meet this need, One-A-Day WeightSmart was formulated especially for consumers who are watching their weight. It starts as a complete multivitamin with 100% of essential vitamins and minerals men and women need when watching their weight including:

Calcium which is one of the most overlooked nutrients when controlling one's weight. At 300mg or 30% of the Daily Value, this level in WeightSmart far exceeds what most adults get in a multivitamin. Centrum® for example contains only 162mg or 16% of the Daily Value.



Chromium and B-Vitamins are essential in helping to convert food to energy. At 100% or more of the Daily Value, these B Vitamins and chromium are an important component of One-A-Day WeightSmart.

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## EXHIBIT J

antennae group			FDA SUPPLEMENT FACTS INFO.
CATEGORY	FDA REQUIRED	ACTUAL FILE	
Supplement Facts Title:	4-6 pt min size	9 pt	
Headings (above and below title):	8 pt min size	8 pt	
Technicalities (above and below title):	6 pt	8 pt	
Text (above and below title):	6 pt	6 pt	
Ingredient List (above and below title):	6 pt	7 pt	
Directions:	10-25 pt min	25 pt	
Rx:	10-25 pt min	5 pt	
Hold Entire:	about 3.5 pt min	3.0 pt	
GENEA DISCLOSURE	in package	8 pt	

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client: Bayer HealthCare
project: QAD Weight Smart (EGGG Version) 100s Canon_AP51182AA08
project #: 95088A
job #: 119496
sizes: 12 3/16" X 8 21/32" (IFC 322)
fonts: Helvetica, Formata, Delta Jangger, Giovanni, Legacy Sans,
OCRb
UPC: 0 16500 51329 2
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